

COMMUNITY PORTFOLIO

PLANNING AND DEVELOPMENT

Confidential

COUNCIL LITIGATION REPORT - FEBRUARY 2019

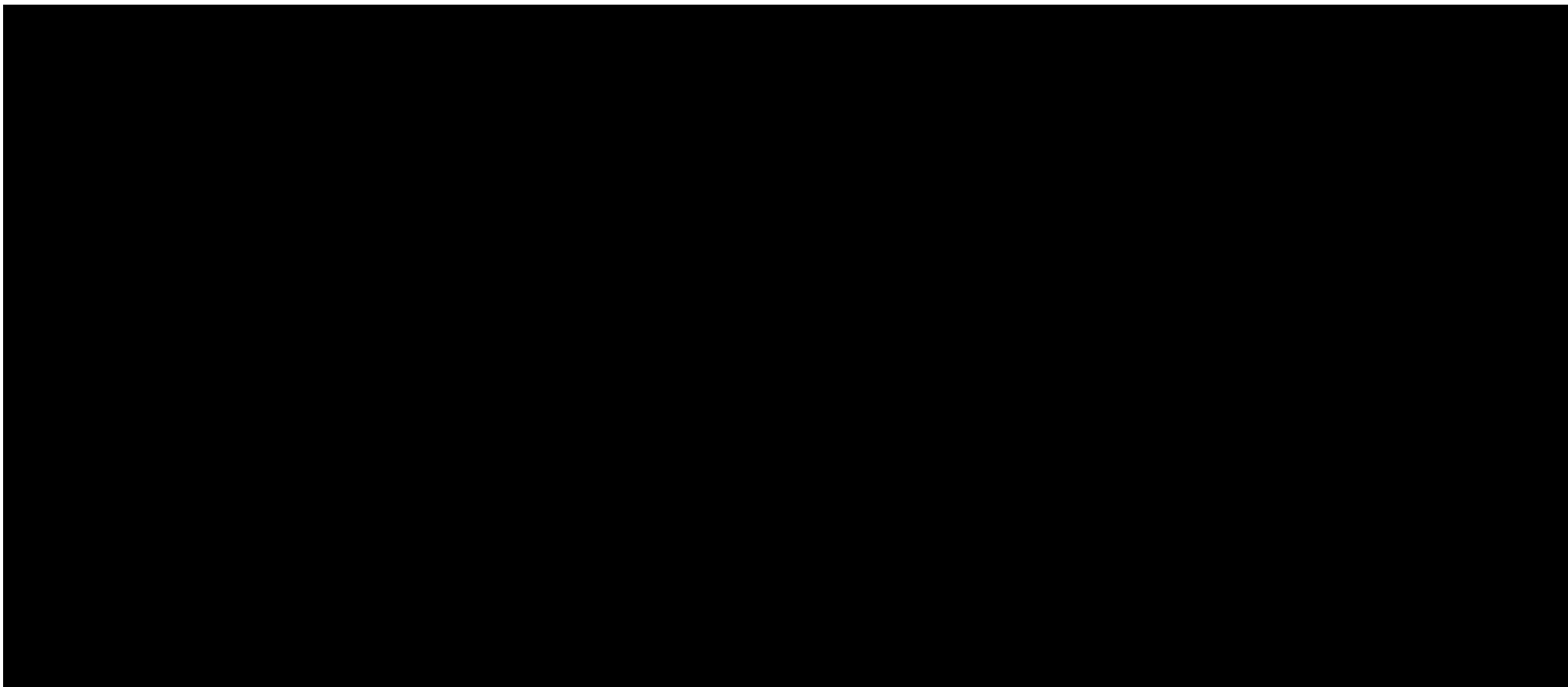
Appeal against refusal of Development Application - St Ann's College (DA/171/2018)	
Responsible Council Officer	
Matt Field, Senior Planner - Development Assessment	
Date of Update	Status Update
4 February 2019	No update.
22 January 2019	No update.
13 November 2018	Hearing scheduled for 25-28 February.
18 October 2018	Hearing has been set down. Expert witnesses have undertaken two site inspections. Gavin Leydon is organising witnesses with a meeting proposed with Gavin, Marcus and Warwick on Tuesday 23 October 2018. Further meeting organised for Gavin to prepare neighbours as witnesses.
19 September 2018	Gavin Leydon attended the preliminary conference in the ERD Court before Commissioner Mohyla on 11 September 2018. The Appellant was represented by Jamie Botten, Rosemary Brooks & Dale Tudman. A week prior to the conference, the appellant (St Ann's) provided amended plans reducing the height by approximately 800 mm. The changes were modelled and showed a marginal improvement however, as the new building would still block views of the City, it was determined (based on discussions with Gavin, Marcus and Warwick) that the changes were not sufficient to warrant putting the compromise back to the panel. As there was little to discuss by way of compromise, in accordance with the request of the Appellant, a full conciliation conference was dispensed with & the matter listed for a directions hearing before a Judge at 9.30am on Thursday 4 October 2018. At that time it is likely that the appeal will be listed for hearing probably sometime in December 2018. The preference of the Court is that the matter be heard by a full bench of the Court i.e. a Judge & two Commissioners.
4 September 2018	Applicant has advised that amended plans are to be lodged for consideration with conference scheduled on 12 September 2018.
15 August 2018	CAP refused the DA for an additional two levels to the Enclave Dec 30 July 2018. Appeal lodged at ERC Court. Conference is yet to be scheduled.
Appeal against refusal of Development Application - 22A Moger Lane (DA/812/2018)	
Responsible Council Officer	
Matt Field, Senior Planner - Development Assessment	
Date of Update	Status Update
4 February 2019	Application refused by the Council Assessment Panel has been appealed through the ERD Court. Council has engaged Norman Waterhouse Lawyers. Letter has been sent advising that the agreement reached by the CEO and Mr Brown contemplated no further legal action relating to the development of the Land, not just demolition of the previously existing walls. Applicant will withdraw appeal if they receive a letter from Planner comparing merits between DA 812/2018 and previously approved 268/2017/A (i.e. that we prefer the former proposal). Norman Waterhouse to draft response to letter from Mr Brown's lawyers dated 4 February 2019 advising the former DA has been approved so they can proceed with that.
Appeal against refusal of Development Application - 200 Hutt Street - 290 Halifax Street, Adelaide (DA/3/2019)	
Responsible Council Officer	
Helen Dand, Principal Planner - Development Assessment	

Date of Update	Status Update
4 February 2019	Application refused by the Council Assessment Panel has been appealed through the ERD Court. Preliminary conference has been scheduled for 18 February 2019.
CUSTOMER	
Ellie Davidson Parking Expiation Prosecution	
Responsible Council Officer	
Robert Donoghue, Enforcement Officer	
Date of Update	Status Update
30 January 2019	No update on this matter.
23 November 2018	No update on this matter.
18 October 2018	Defendant agreed to make payment to Council. Magistrate adjourned to 31 January 2019 in order for Ms Davidson to make payment direct to Council.
28 September 2018	No update on this matter.
21 August 2018	Defendant did not appear but gave notice to the Court she was unable to attend. Magistrate adjourned to 17 October 2018.
6 August 2018	No update on this matter.
27 June 2018	Defendant did not appear but gave notice to the Court she was unable to attend due to sick child. Magistrate adjourned to 21 August 2018.
16 May 2018	Defendant did not appear at the hearing on 14 May 2018. Magistrate provided one final adjournment to 27 June 2018.
4 April 2018	<p>A Parking Expiation (no. 14793264) was issued to vehicle L216 on 23 February 2017 in Pirie Street, Adelaide for stopping in a Ticket Parking Zone without displaying a valid ticket.</p> <ul style="list-style-type: none"> The owner of the vehicle, Ellie Davidson, elected to be prosecuted for the matter. Initial Hearing set for 3 April 2018. <p>Defendant did not attend. matter adjourned to 14 May 2018 with the requirement of a fresh summons to issue.</p>

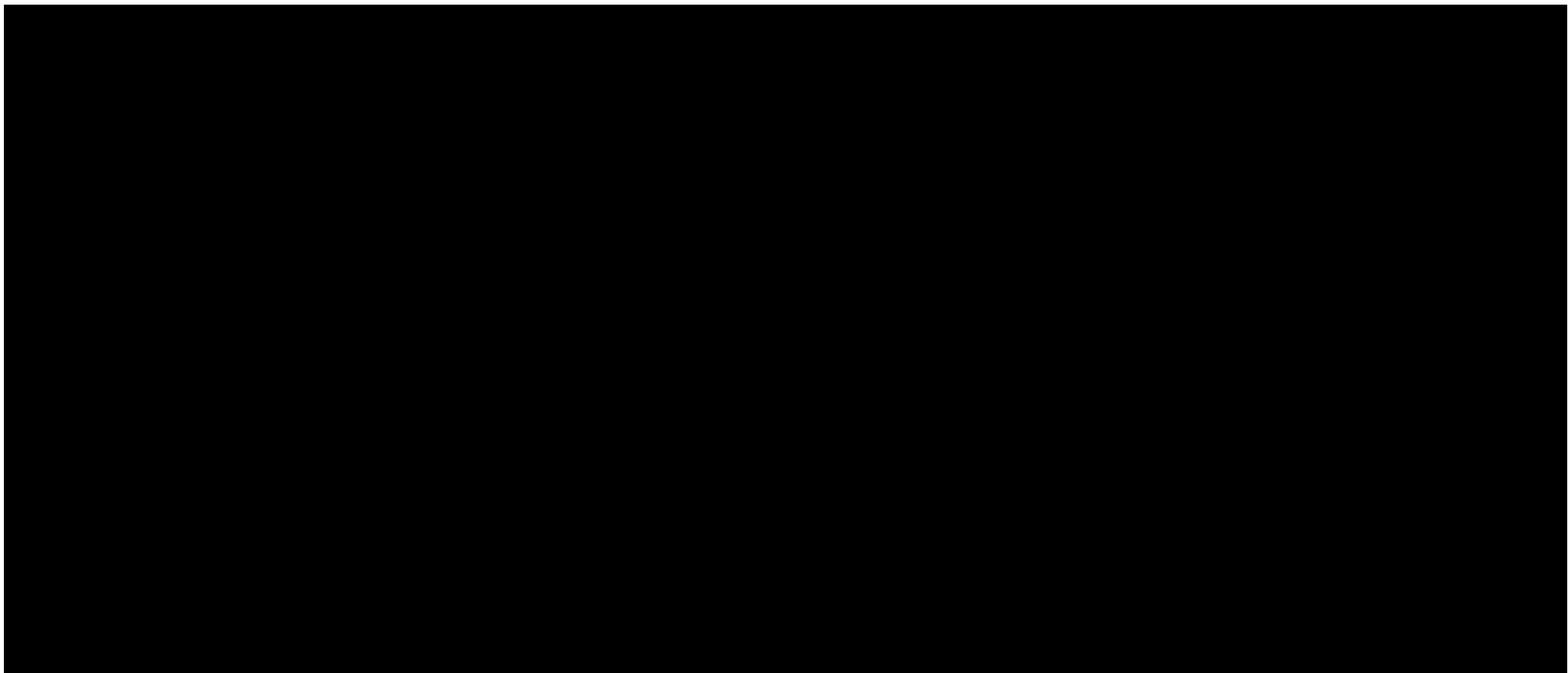
Joe Santo Parking Expiation Prosecution	
Responsible Council Officer	
Robert Donoghue, Enforcement Officer	
Date of Update	Status Update
30 January 2019	No update on this matter.
30 November 2018	Defendant appeared at the Pre Trial Conference and claimed his vehicle is entitled to the longer time limit for commercial vehicles as he uses it for work purposes. Magistrate advised the defendant the council case is strong and the expiation appears to have been validly issued. Trial date set for 1 March 2019.
25 October 2018	Defendant appeared at the Initial Hearing and pled not guilty. Pre-Trial Conference date set for 29 November 2018.
21 August 2018	<p>A Parking Expiation (no. 16397354) was issued to vehicle S070AFA on 13 Mar 2018 in Stephens Place, Adelaide for overstaying the maximum time limit in a Loading Zone.</p> <ul style="list-style-type: none"> • The driver of the vehicle, Joe Santo, stated the expiation was not validly issued and elected to be prosecuted for the matter. • Initial Hearing set for 16 October 2018.

COMMUNITY AND CULTURE
-
INFORMATION MANAGEMENT
-
GROWTH PORTFOLIO
PROPERTY
-
ECONOMIC DEVELOPMENT AND TOURISM
-
MARKETING AND COMMUNICATIONS
-
SUSTAINABILITY
-

OPERATIONS PORTFOLIO
DESIGN AND STRATEGY
-
INFRASTRUCTURE
-
PUBLIC REALM
-
SERVICES PORTFOLIO
FINANCE AND BUSINESSES

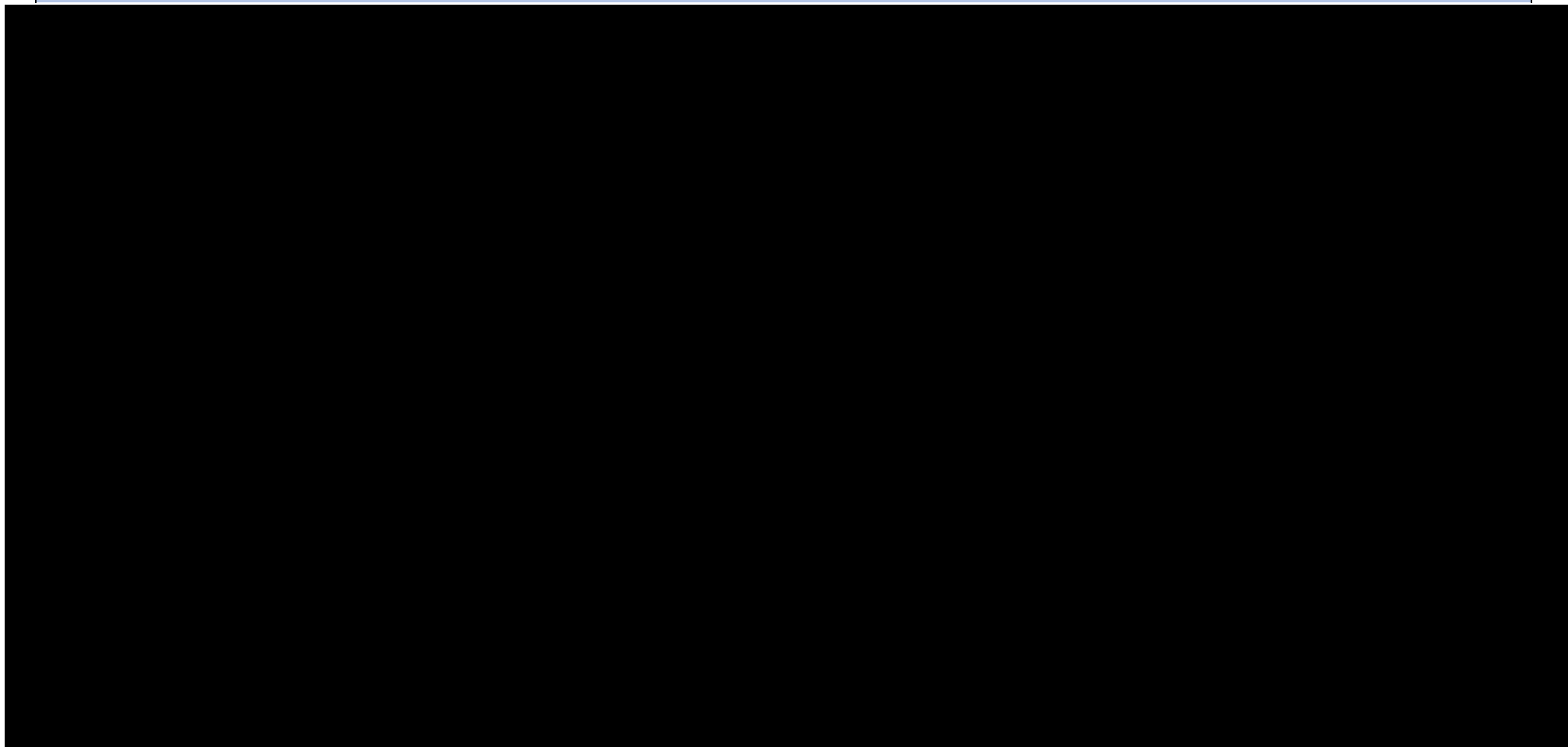


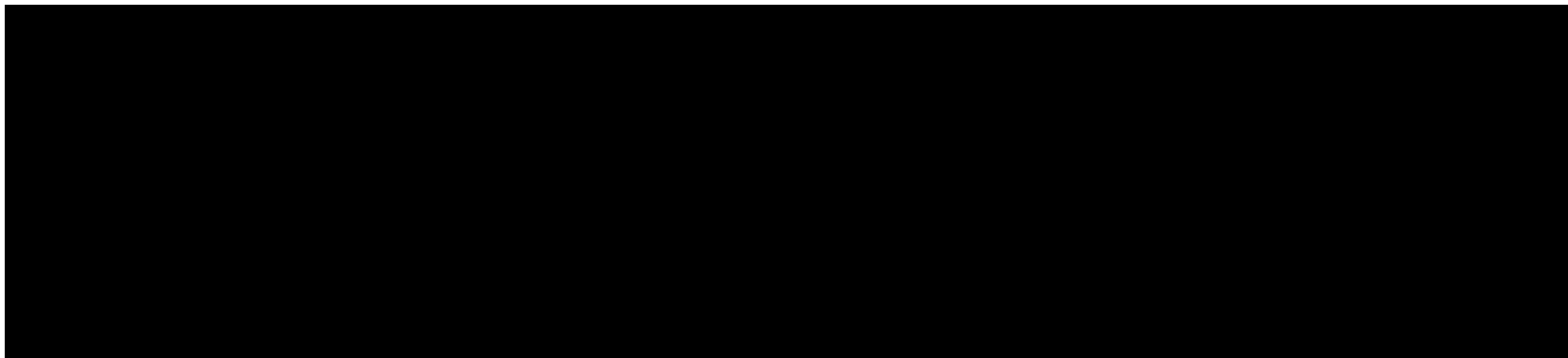
CO



CO

PEOPLE AND GOVERNANCE





Confid

Cosenza v South Australia - SCCIV 1124 of 2016	
Responsible Council Officer	
Brett Kahland, Consultant Legal Services	
Date of Update	Status Update
1 February 2019	The decision of the Chief Justice stands, the proceedings are now at an end and the wisdom of the Council's actions with respect to the matter are no longer in doubt. Matter can be closed
6 December 2018	No further trial updates
29 October 2018	No further updates.
9 October 2018	Interlocutory application - appellant request for extension of time by appellant
10 September 2018	Case underway. The appellant (Mr Cosenza) has revised his legal arguments concerning the grounds of appeal. Separately, CoA has received confirmation of LGA funding support for case management in the Supreme Court before His Honour Chief Justice Kourakis. LGA has received \$19,363 in voluntary contributions from other councils - significant cost offset against the approximate cost of \$37,231 incurred by CoA to defend the matter in the Supreme Court
7 August 2018	No further updates.
5 July 2018	No update.
7 June 2018	CoA is abiding the event and Crown handling the appeal.
7 May 2018	Appeal trial book index. Given Council is abiding the event, Council has not expressed a view regarding the proposed book.
4 April 2018	<p>Mr Cosenza has filed an appeal to the Full Court of the Supreme Court of South Australia against the decision given by His Honour Chief Justice Kourakis in Cosenza v State of South Australia & Anor [2017] SASC 183. This is an unusual course, particularly in light of the commencement of Clause 36 of Schedule 1 to the Fines Enforcement and Debt Recovery Act 2017, which has the effect of validating all enforcement determinations purportedly made by the Fines Enforcement and Recovery Officer (the FER), notwithstanding the defects found by His Honour to have infected the process adopted by the FER under Section 3 of the Expiation of Offences Act 1996.</p> <p>The State Government through Crown Law is proposing to argue that Chief Justice Kourakis was correct, but not for the reasons he outlined in his Judgement. In this instance, Norman Waterhouse consider that responsibility for responding to the grounds appeal should fall exclusively within the domain of the Crown. Advising the Court as to the effect of Clause 36 is also a matter within the domain of the Crown. Accordingly, Council has instructed its solicitors to write to the Court (and if necessary formally attend at the first directions hearing for that matter) to seek leave of the Court to be excused from attendance and participation in the proceedings, because the Council agrees to 'abide the event' (on the condition that the Council seeks only to be heard on the question of costs at first instance, and of the appeal)</p>

Litigation Closed		
Date closed	Title	Description
6 December 2018	Gawler Place Rent Review	All items finalised. Council has paid the court order in relation to the defendant's costs of \$75,000
1 March 2018	Removal of unfinished development at 22 Moger Lane, Adelaide	All items in the Court Order have been addressed and finalised
12 April 2018	Appeal against the refusal of Planning consent - DA 80/2017 - 382 Gilles Street	Applicant withdrew
12 April 2018	Kaurna Native Title Claim	No longer a claim
1 June 2018	Mark Bombardieri Parking Expiation Prosecution	Magistrate found in Council favour. Defendant fined \$516
19 July 2018	Litter Prosecution	Magistrate rejected defendant's version of events, and fined the defendant (largest imposed)

INTERNAL MEMO

TO: Strategic Risk & Internal Audit Group
CC:

FROM: Katharine Finlay
Freedom of Information Officer

DATE: 1 January 2019

YOUR REF:

FO REF: 15/02953

EXT NO: 131

SUBJECT: Freedom of Information Applications – December 2018 / January 2019

Purpose

To report on the monthly status of Freedom of Information (FOI) applications currently being determined by the Risk & Audit Team.

Background

When an FOI application is received City of Adelaide has 30 days to make an initial determination as to whether the documents should be released. The determination is made by an Accredited Freedom of Information Officer in accordance with the FOI Act after consultation with any affected third parties and internal staff.

There is a period of 30 days following the determination in which the applicant may appeal a determination made. This internal review is conducted by the Chief Executive Officer, Mark Goldstone and must be completed within 14 days of receiving the appeal. Following the internal review determination, the applicant can then appeal to the Ombudsman SACAT within 30 days if they are still aggrieved by the decision.

Summary

Please find attached a report detailing the active Freedom of Information applications for the period 1 December 2018 to 31 January 2019.

During this period, there have been eight (8) active applications.

There have been no Internal or External Review applications.

Application

- Four (4) applications are currently being dealt with.
- One (1) application has had final release of outstanding documents.

- Two (2) applications have been transferred to their relevant agencies.
- One (1) application has been transferred in part to another agency.
- One (1) application was closed due to the applicant's failure to reduce her scope.

Reviews:

- Nil.

Consultation by other agencies:

- There have been two (2) consultations by external agencies.

FOI Applications - December 2018 / January 2019

Applicant Name	Applicant Type	Category	Status	Summary	Date Received	Due Date	Date Determined	Outcome	Exemption	Source
Patrick Finnegan	Member of Public	Non-personal	Determined	Agreements/Documents between CoA and Electric Vehicle Council	1/11/2018	3/12/2018 g EoT to 12/2018	12/12/2018 Part Final	Partial release.	Clause 6 - Personal Affairs; Clause 7 - Business Affairs.	
Botten Levinson	Lawyer/Agent	Non-personal	Transferred	Maxcon Development / Flagship / Penny Place Pty Ltd	28/11/2018	28/12/20	-	Transferred to DPTI as correct body.	-	Central Records
Kelly Henderson	Member of Public	Non-personal	Closed	Boulton Street upgrade	**NEW** 10/12/20	9/01/2019	9/01/2019	Closed due to failure of applicant to reduce/clarify scope.	-	Customer Centre
Elke Obermeier	Member of Public	Non-personal	Active	Ebenezer Night Markets consultation	**NEW** 9/1/2019	8/02/2019				Email
David Donaldson	Member of Public	Non-personal	Active	War Memorial Drive closure due to bollard installation	**NEW** 28/2/2018	11/02/2019		Partial (majority) transfer to DPTI.		Customer Centre
DBH	Lawyer/Agent	Non-personal	Active	Moonta Street - Ba Guo Bu Yi Restaurant correspondence	**NEW** 1/9	15/02/2019				
Seven Network	Media	Non-personal	Transferred	Bus delays and cancellations	**NEW** 4/01/2019	-	-	Transferred to DPTI	-	Central Records
Kelly Henderson	Member of Public	Non-personal	Active	White Lane, CT 2114/143	**NEW** 5/01/2019	25/02/2019				Customer Centre

FOI Consultations

Applicant Name	Applicant Type	Category	Status	Summary	Date Received	Due Date	Date Determined	Outcome	Exemption	Source
DPTI	Govt Dept	Non-personal	Determined	Maxcon Development / Flagship / Penny Place Pty Ltd	7/01/2019	14/01/2019	14/01/2019	Full release	-	Email
DPTI	Govt Dept	Non-personal	Determined	ACP Audit building st	23/01/2019	29/01/2019	29/01/2019	Full release	-	Email